



The Scrivener

Scribes — The American Society of Legal Writers

Spring 2008

President's Column

by Stuart Shiffman

On March 1, the Scribes Board of Directors conducted its annual board meeting as part of a busy and productive weekend in Las Vegas, Nevada. We were hosted by the law school at the University of Nevada at Las Vegas. We began our weekend by presenting a writing program to an overflow audience of UNLV law students; board members Bryan Garner, Darby Dickerson, and Joe Kimble presented an outstanding program. After the session, UNLV hosted a reception, and I had the opportunity to speak with many students who thought the program was both informative and entertaining. Several years ago, Scribes began conducting such programs in conjunction with the annual board meeting. It has been one of our most successful endeavors; in addition to offering insights to law students from great writers, it publicizes our organization. Our thanks go to Dean John White and all the staff at UNLV who made our weekend so enjoyable.

On Friday evening, the board was hosted by UNLV faculty at a dinner in Las Vegas. The next day, we got down to important business, and I am pleased to update you on some past accomplishments and future endeavors.

To a large degree, the contributions of Thomas Cooley Law School, both financial and logistical, have allowed our organization to build a solid

foundation for future growth. The staff at Cooley has contributed to this effort in countless ways that I cannot even begin to catalogue.

Through the efforts of our board, each year we continue to recruit institutional members—and they remain a solid foundation for Scribes.

As we present a wide variety of programs across the country, the Scribes name becomes better known and associated with high-quality legal writing. It is an accomplishment we can all be proud of.

One of my first acts as president of Scribes was to create a Lifetime-Achievement Award committee. This committee was formed to establish guidelines for presenting an award that recognizes lifetime achieve-



Board members at their 2008 meeting. Seated (left to right): Christy Nisbett, John Wierzbicki, Michael Hyman, Steve Smith, Stuart Shiffman. Standing (left to right): Bryan Garner, Christopher Wren, Otto Stockmeyer, Darby Dickerson, Charles Dewey Cole.

ment in legal writing. While we have given the award in past years, we have done it in a haphazard fashion. With the guidance of Chairman Bryan Garner, the committee will recognize worthy honorees in a more formal way.

This year the Board of Directors voted to confer the Lifetime-Achievement Award on Supreme Court Justice Antonin Scalia. We will present the award to Justice Scalia at the Scribes Annual Luncheon on Saturday, August 9, 2008, during the American Bar Association meeting in New York City. (See page 3 for details.) I am proud and excited that Justice Scalia has accepted our invitation to personally accept his award and to favor us with his remarks. I hope to see many of you in New York—and I look forward to hearing Justice Scalia.

In addition to Justice Scalia, we will recognize winning writers selected by our Brief-Writing and Book-Award committees. You'll find more information about the luncheon in this issue of *The Scrivener*.

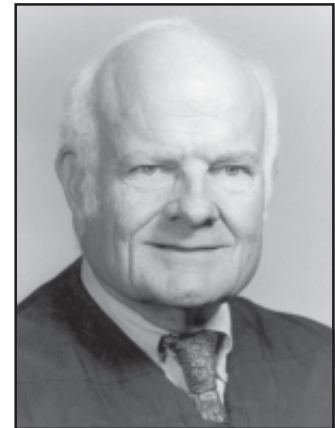
New Members

Sherri K. Adelfkoff (Pittsburgh, Pennsylvania)
Cory Andrews (Coral Gables, Florida)
Jonathan Bass (Sahuarita, Arizona)
A.S. Ben-Merre (Bronx, New York)
Ada Brown (Dallas, Texas)
James G. Carr (Toledo, Ohio)
Jonathan Cohen (Washington, D.C.)
Jennifer Dorsey (Las Vegas, Nevada)
Ray Dowd (New York, New York)
Steven Feldman (Huntsville, Alabama)
John E. Grzybek (Minneapolis, Minnesota)
Robert John Kane (Springfield, Illinois)
Richard R. Kennedy (Lafayette, Louisiana)
Oren Kipling (Austin, Texas)
Craig M. LaChance (Phoenix, Arizona)
John D. LaDue (South Bend, Indiana)
Rebecca B. Phalen (Atlanta, Georgia)
Timothy J. Storm (Wauconda, Illinois)
Elizabeth S. Vaughan (Reston, Virginia)

In Memory of Judge Charles B. Blackmar

Scribes is saddened to learn of the passing last year of Charles B. Blackmar of St. Louis, Missouri, a former president of Scribes.

Judge Blackmar practiced law for 18 years with a Kansas City law firm before entering upon full-time teaching at Saint Louis University School of Law in 1966. He was



Charles B. Blackmar

appointed to the Supreme Court of Missouri in 1982. He was chief justice from 1990–92 and continued as a senior judge after his retirement.

“We have lost a great judge, scholar, teacher, and enjoyable friend,” said Chief Justice Michael A. Wolff of the Missouri Supreme Court. “Judge Blackmar was passionately involved with the advancement of the law and the judiciary for 60 years. We certainly will miss him.”

Judge Blackmar was a prolific legal writer, co-authoring West’s *Federal Practice Guide Manual* and several editions of West’s *Federal Jury Practice and Instructions*. In law-review articles, he was a strong opponent of the death penalty and a passionate defender of the “Missouri plan” of judicial selection. He contributed several articles to *The Scrivener* on effective brief-writing.

Judge Blackmar was elected to the Scribes Board of Directors in 1982 and was president in 1986–87. It was during his term as president that Scribes initiated the annual Law-Review Award. Also during his term, the board amended the bylaws to extend the term of future presidents to two years. And the board eliminated the requirement that a prospective Scribes member had to be nominated by an existing member, making broader membership possible.

Judge Blackmar died on January 20, 2007, at age 84. He was a legal scholar, writer, and jurist whose contributions to Scribes 20 years ago endure to this day.

**Please join us for the
Scribes 2008 Annual Luncheon**

Remarks by Justice Antonin Scalia
Recipient of a Scribes Lifetime-Achievement Award

Other presentations:
Scribes Book Award and Brief-Writing Award

Book-signing to follow the program

Held during the ABA Annual Meeting
in New York, New York
on Saturday, August 9, at 12:00–2:00 p.m.

Harvard Club of New York City
North & Biddle Rooms
35 West 44th Street

\$75 for members with RSVP & payment by July 15;
\$100 for members at the door; \$125 for nonmembers

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RSVP to mcalpinb@cooley.edu by July 15, 2008.

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Submit Your Articles

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ically or on disk) to the address
shown below.

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Summer	July 15
Fall	October 15
Winter	January 15

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Remembering Donald J. Dunn

by Roy Mersky*

With sadness I write a memorial in honor of my dear friend, colleague, and coauthor, Donald Jack Dunn. Don was born on November 9, 1945, in Tyler, Texas. He died, at the age of 62, on January 5, 2008, in Coto de Caza, California, of complications related to a cancer that he had fought valiantly for almost two years. He is survived by his beloved family: wife Cheryl Dunn; son Kevin; daughter-in-law Wendy; and two grandchildren, Camden and Tobin—as well as a host of friends and admirers.

Don was nationally known as a leading dean, an outstanding law librarian, a respected scholar, and a talented writer. He held leadership positions in the American Association of Law Libraries, the Association of American Law Schools (AALS), and the American Bar Association (ABA). Don served on over 40 ABA site-evaluation teams, as chair of five of these teams, and as the sole evaluator for three summer-abroad programs in Moscow, Beijing, and Cape Town. He was a member of the American Law Institute and a Fellow of the American Bar Foundation.

A prolific writer of numerous books and articles, Don was inducted into the University of La Verne's "ULV Academy" in May 2007, an honor given to those individuals who have demonstrated high-quality research and a clear commitment to the advancement of the University of La Verne.

Don was my coeditor and coauthor on several publications. During Don's career at Tarlton in the early '70s, he assisted Myron Jacobstein and me in identifying articles for inclusion in the publication *Index to Periodical Articles Related to Law*. It was not until 1991 that he consented to resume his association with the *Index*, joining Myron and me as a coeditor. After Myron's death, Don continued as my coeditor on the *Index*. Don compiled the *Five-Year Cumulation of Volumes 31–35*, and oversaw the transition from paper

to electronic version when Wm.S. Hein & Company became our publisher in 2003.

Don was an early contributor to Jacobstein and Mersky's *Fundamentals of Legal Research* (FLR) and *Legal Research Illustrated*, and became a coauthor on the sixth and seventh editions of the books. Upon Myron's death, Don became my coauthor on the eighth edition. In 2006, Don and I were honored by the American Association of Law Libraries' Academic Law Librarians Special Interest Section, which voted FLR one of the most influential texts in legal research over the last 50 years (1957–2007). Don was an incredible coauthor. His attention to detail was impeccable. He oversaw the preparation and production of the various editions of FLR, and I remain grateful for his consistent focus on quality and content. He continued working on the ninth edition until his death.

As a recognized authority on legal research and writing, Don was a founding member of *Perspectives: Teaching Legal Research and Writing* and a member of its editorial board from 1991–2007. In 1997, he joined Scribes, serving as chair of the Book-Award Committee, 1992–95; on the Board of Directors, 1993–96; as secretary, 1996–2001; as president-elect, 2001–01; as president, 2001–03; and as immediate past president, 2003–05.

Beyond his professional contributions, what made Don special as a colleague and friend? It was his manner. He was unpretentious, with a quick smile and a wry wit. Bred in East Texas, he had an innate Southern



Donald J. Dunn at the Scribes Annual Luncheon, August 2006.

* Just before this issue went to press, we learned of the sad and sudden death of **Roy Mersky**, a giant in the field of legal education, a past president of Scribes, and a longtime central figure in our organization. We will have a tribute to **Roy Mersky** in the next issue.

charm that was modest yet exuberant and brash. Don communicated in a straightforward, down-to-earth manner, and he exhibited good common sense. When you shook his hand, you knew this was someone you would like to have as a friend and a colleague. He was someone you could count on.

When I turned to Don's family and friends for consolation, their recollections about his life and the impact he had on their lives brought back so many memories of this dear man who was admired by, and a friend of, so many. Daniel Martin, the law director at Loyola Marymount, remembers Don as an extraordinarily kind person, encouraging to new librarians and a mentor to many. Bob Berring, University of Berkeley Law School, said Don was "one of life's good guys, and great company." Jonathan Pratter, Tarlton's foreign and international law librarian, mentioned Don's consideration and respect for his professional abilities. Rich Leiter, director of the University of Nebraska Law Library, recalls Don's expertise as a knowledgeable member of accreditation teams. Terry Martin, Harvard law librarian, also recollects Don's accreditation expertise. Don had created his own accreditation questionnaire that he asked schools to complete, and on the day after his visit to a school, he would have completed a draft report. Terry also commented that Don was the most amazingly fast loose-leaf filer he ever saw. Bob Nissenbaum, director of Fordham's law library, vividly remembers when, as he was finishing his first year at Western New England College School of Law (WNEC), Don allowed a basketball game during the library's move from its temporary home in a girl's school gymnasium.

Don and Cheryl doted on their son Kevin, their daughter-in-law Wendy, and their grandsons Camden and Tobin. In fact, a desire to be near their grandsons was one of the reasons that prompted Don's leaving WNEC to join the La Verne Law School faculty as dean. A great source of pride to Don was the fact that both Cheryl and Kevin became lawyers.

Generous in his affections, he included me in this family circle. In February 1967, Don joined the Tarlton law-library staff as a work-study student, filing cards in the public catalog. While my recollections of his student days are professional in nature, he recalled our relationship, perhaps more accurately and certainly more fervently, in his article on mentoring for the *Law Library Journal*:

My first duty as a work-study student in the Tarlton law library . . . was filing cards in the public catalog. Almost every day this little guy would come rushing by and say, "Do this" or "Do that." Finally, I asked someone, "Who the hell is that?" I was told it was Professor Roy M. Mersky, my boss.¹

With that auspicious beginning, our friendship and professional relationship flourished. My children spent many hours in Don's company at Tarlton when he and I shared weekend duties. My youngest daughter Ruth's most vivid memories of the library are of filing catalog cards and shelving books with Don on Saturday mornings. While at Tarlton, he became an avid table-tennis player. Some of my fondest memories of Don center on the fiercely competitive matches that I watched him play against fellow staff members, students, and faculty in the library's basement.

After receiving his undergraduate degree from the University of Texas (UT) in 1969, Don joined the staff as a senior library assistant and assistant to the law librarian (me). Don's performance as an assistant was everything that I hoped for: he had a high sense of responsibility and commitment and never hesitated in accepting new responsibilities. He was intelligent and highly motivated. He was well liked by the staff, and I began to rely on him for a myriad of tasks. But he was already exhibiting a spirit of independence and principle. One day, my comfortable world was shattered with Don's announcement that he had been drafted. Even though protests had begun against the Vietnam War, Don was a patriot and eager to serve his country. He and Cheryl made arrangements for her to live with her parents during his military career. The library gave him a going-away party and a gift. He left on the bus to report for duty on Friday; early the next week he returned to the library. The draft board had declared him unfit for military duty, so he wanted his job back. I told him OK, but he had to return his gift. He never did.

While serving as my administrative assistant, Don helped me and J. Myron Jacobstein in the summer institutes that we directed for the American Association of Law Libraries, the National Endowment for the Humanities, and the Institute of Court Administration. He helped organize the curriculum, managed the budget, and made our travel arrangements. At this time, Don had done little traveling beyond the Texas borders. But he was adventuresome by nature, and Myron and I found

him to be an enthusiastic aide and traveling companion. Usually affable, Don could get testy when he was awakened in the middle of the night to perform tasks that Myron and I deemed necessary, for instance when I asked him to swim laps at 4:00 a.m. During these jaunts, I learned to depend on his competency and not to disturb his sleep.

Have I mentioned Don's integrity? UT allowed employees to work full-time and receive three hours' leave time a week to attend classes. With that as an incentive, Don enrolled in the UT School of Library and Information Science with my blessing. Once a week, he left work to attend class—or so I thought. One afternoon, well into the fall semester, the dean of the library school called me to ask why Don had not been attending classes. Immediately I called Don in to explain his absence. Very simple, he said: he found the classes boring. In the ensuing frank discussion, I told him that skipping classes was not an option; if he wanted a career in law librarianship, he would attend classes, find them interesting, and graduate. A little sheepishly, he accepted my advice and completed his coursework.

After receiving his MLS from UT in June 1972, Don was promoted to supervising librarian of our Criminal Justice Reference Library, a position he held until 1973 when he joined WNEC School of Law as its law-library director.

He was the first law-library director at WNEC, and there he launched his career as a premier law-library director. Don received tenure as professor of law at WNEC in 1980 and received his law degree from the school in 1983. In August 1996, Don became WNEC's interim dean, assuming the deanship in June 1998. In January 2002, he resigned the deanship, returning to law librarianship as WNEC's Associate Dean for Library and Information Resources. WNEC and now Dean Arthur Gaudio recognized Don's contributions to their programs on Monday, April 14, 2008, "A Celebration of the Life and Legacy of Don Dunn":

In his three decades at the School of Law, Don Dunn was both a contributor and a recorder of our history. From the makeshift law library he took over in 1973 in the Our Lady of Lourdes gym to the thriving law center he left at the turn of the millennium, Don was an important part of our evolution. His contributions to legal research and scholarship, library science, and American Bar Association study-abroad programs have

impacted legal education around the globe. Above all, Don has left a lasting mark on the memories of the many colleagues and students who were fortunate to share time at the School of Law with him. Please join us as we celebrate the life and legacy of the man we called dean, alumnus, professor, librarian, scholar, and friend.

In June 2003, he joined the University of La Verne College of Law as dean and professor of law, a position he held with distinction until his death on January 5, 2008. The University's president, Stephen Morgan, acknowledged Don's contributions:

Donald Dunn was an experienced administrator, dedicated educator and recognized scholar who had a profound and lasting effect on the University of La Verne College of Law. As dean, he provided keen leadership that helped carry our College of Law over the initial threshold of American Bar Association accreditation

A final reflection on the aspects of Don's life: His scholarly contributions, his committee leadership, his service to the legal communities, and his creative and innovative approaches to administration and scholarship are all marks of his legacy to our profession. But I remember his laughter, his humanity, and his love of family and friends. He was a good, kind, caring, and decent man. I miss him.

Endnote

- 1 Don Dunn, *Never Formally Introduced: Mersky as Mentor*, 91 *LAW LIBR. J.* 205 (1998).

Notice to 25-Year Members

Scribes would like to honor our 25-year members. If you have been a member for 25 years (as best you remember), please contact Joe Kimble at kimblej@cooley.edu. Please include your best estimate of when you joined.

Using Microsoft Word's Readability Program

by Norman Otto Stockmeyer

Readability should be a goal of all careful writers. Lawyers, in particular, need to exercise care so that their readers can understand their writing.

Readability tests are one way to evaluate how understandable your writing is. They are the product of some 80 years of research and are widely used in education, the military, health care, the courts, and government.

Today's word-processing programs have made it almost as easy to assess the readability of a document as it is to check its spelling. Microsoft Word's word-processing software, for instance, can perform several readability calculations in the blink of an eye.

Word's readability statistics are a useful final check on several factors affecting the clarity of a document. They include average sentence length, the percentage of passive-voice sentences, overall readability, and grade level.

If your document scores low in readability, consider revising and retesting it. (WordPerfect, WordPro, and Google Docs offer similar readability programs. This article focuses on Word's program.)

To enable Word's readability program, using Microsoft Office Word 2003 as an example, click on *Tools*, then *Spelling and Grammar*, then *Options*, and then check *Show readability statistics*. Now Word will display readability statistics whenever you spell-check a document. (You do spell-check, don't you?)

Be aware that, although helpful, some of Word's readability scores are not completely trustworthy. This article explains what the scores mean and how to work around the flaws.

Readability scores

Word's Flesch Reading Ease score is based on a formula developed in 1949 by Rudolf Flesch. It is computed using the average number of syllables per word and words per sentence. Syllables-per-word is a measure of word difficulty. Words-per-sentence is an indicator of syntactic complexity.

The Flesch Reading Ease scale ranges from zero to 100. Zero to 40 is very difficult to difficult reading. Eighty and above is easy to very easy. Some states

require that insurance policies score at least 40 on the Flesch Reading Ease scale. Flesch himself set the minimum score for plain English at 60. Microsoft's documentation encourages authors of standard documents to aim for a score of 60 to 70.

Word's other readability score is the Flesch-Kincaid Grade Level. That score is based on research conducted by J. Peter Kincaid in the mid-1970s. He reformulated the Flesch test to produce a formula for computing a text's reading grade level.

The Flesch-Kincaid score has the advantage of measuring the readability of a document based on the minimum education level required for a reader to understand it. Some federal agencies require that written materials meet a specific grade level based on the Flesch-Kincaid formula.

Microsoft recommends aiming for a Flesch-Kincaid score of 7.0 to 8.0 for most documents. According to a 1993 study, the average adult in the U.S. reads at the seventh-grade level.

Controversy

Critics of readability tests claim that they are designed for children's books and do not reflect adult reading comprehension. In fact, the Flesch and Kincaid formulas were designed specifically for adult material and tested on adult readers.

While not 100% reliable, readability tests are as reliable as other common psychological tests, such as reading tests. They work well because they use simple word-length and sentence-length factors, which are among the primary causes of reading difficulty.

Another criticism has more validity. Some readability experts reject Microsoft's Flesch-Kincaid Grade Level scoring as seriously flawed. This is because Microsoft's version of the Flesch-Kincaid test has been artificially capped at grade level 12. Kincaid's original formula went to grade 17, equivalent to one year of graduate school. Most versions of Word report any document written at a college or graduate-school level as grade level 12.

This grade-level flaw should not concern careful writers. Grade level 12, whether artificially capped or not, is too difficult for many readers. You should revise

any document scoring that high. Even college graduates prefer to read general materials written at the 10th-grade level.

Microsoft has not acknowledged the grade-level flaw in its Flesch-Kincaid Grade Level program. But Word Office 2007 now goes above grade level 12. The same flaw in the Mac version of Word has not been fixed.

There are other computerized versions of the Flesch and Kincaid formulas and other formulas. Quality varies. One expert subjected Lincoln's Gettysburg Address to a dozen online readability programs. They produced reading grade-level scores from 9.7 to 16.18! (www.smileycat.com/miaow/archives/000875.php) His recommendation? Pick one program and stick with it.

Other helpful statistics

Word's readability software offers two other statistics of potential help to writers concerned about readability. They are words per sentence and the percentage of passive-voice sentences.

Many plain-language advocates—Bryan Garner, Joseph Kimble, Judge Mark Painter, and Wayne Schiess among them—agree with Rudolf Flesch that you should keep average sentence length to 20 words or fewer. So the words-per-sentence calculation is helpful.

“Prefer the active voice” is familiar advice if you have read any guide to good writing. So Word's percentage-of-passive-sentences calculation should be helpful. Unfortunately, it too is flawed.

The problem is this. As a document is being spell-checked, you may choose to ignore the sentences flagged as passive. If so, the readability calculator ignores them too. This can result in an inaccurately low (or even zero) percentage being shown.

Microsoft has acknowledged the problem and offers the following workaround. After you view the Readability Statistics box, immediately press the *F7* key. The Readability Statistics box should now display the correct percentage of passive sentences. (If you wait too long to press *F7*, the box will continue to display the incorrect percentage. Then you will have to completely recheck the document.)

What if you want to check the readability of just a portion of your document—perhaps an Executive Summary that must be clear to everyone? Here's how. Highlight the section of text and press *F7*. When asked if you want to continue checking the remainder of the

document, select *No*. The readability statistics that are displayed will relate only to your selection.

A test is just a tool

Readability testing can be a good check on the clarity of your writing. When testing on actual readers is impractical, readability formulas can give some indication of how understandable your document is. And word-processing programs have greatly simplified the process.

But no mathematical formula can truly measure understanding. For instance, on the Flesch Reading Ease and Flesch-Kincaid Grade Level tests, James Joyce's *Ulysses* scores somewhat easier to read than Beatrix Potter's *The Tale of Peter Rabbit*. And because those formulas are based on word counts rather than word order, scrambling the words in a sentence will not change its readability scores.

In short, just using shorter words and sentences can result in a text that is more difficult, not less. You also have to attend to other factors such as tone, approach, organization, and design that are appropriate to your target audience.

So do not write to the test. One expert compares that to trying to raise the temperature of a room by holding a match under the thermometer. Rather, write to your audience. Then test—revise—and retest.

(This article has an average sentence length of 13.1 words. It contains 7% passive sentences and a couple of split infinitives. It scores 39.3 on the reading-ease scale and is written at grade level 11.0.)

Norman Otto Stockmeyer is an emeritus professor at Thomas M. Cooley Law School and immediate past president of Scribes. He has been contributing articles to *The Scrivener* since 1982. This is his eighth, in addition to his President's columns.

Resources

- William H. DuBay, *The Principles of Readability* (2004), <http://www.impact-information.com/impactinfo/readability02.pdf>
- Rudolf Flesch, *How to Write Plain English* (1979)
- Mark Hochhauser, *Some Pros and Cons of Readability Formulas*, 44 *Clarity* 22 (Dec. 1999)
- Mark Hochhauser, *What Readability Expert Witnesses Should Know*, 54 *Clarity* 38 (Nov. 2005)
- Louis J. Sirico, Jr., *Readability Studies: How Technocentrism Can Compromise Research and Legal Determinations*, 26 *Quinnipiac U. L. Rev.* 147 (2007)

Winner of the Scribes Law-Review Award

Remarks by Katherine A. Ritts

The winner of the Scribes 2008 Law-Review Award—for the best student note or comment in a law review or journal—is Katherine Ritts from Syracuse University College of Law. Her winning article, “The Constitutionality of ‘Let Them Rest in Peace’ Bills: Can Governments Say ‘Not Today, Fred’ to Demonstrations at Funeral Ceremonies?” was published in 58 Syracuse Law Review 137 (2007). The article was selected from among 70 entries. Professors at Thomas Cooley Law School did the initial screening. The Law-Review Award Committee, chaired by Roy Mersky, made the final selection: Glen-Peter Ahlers, Mary Bowman, Daniel Karon, Richard Leiter, Robert Markle, and Richard Wydick. The award was presented in March at the National Conference of Law Reviews. The presentation is always made at the annual “Scribes dinner,” generously sponsored by Thomson West.

First, I would like to thank Professor Mersky and the Scribes committee for selecting my note. It is truly a tremendous honor to be chosen for this award from so many excellent student papers. I am proud to be here tonight representing the Syracuse Law Review, and I would like to take this opportunity to thank all the members of the Senior Board for the outstanding work they have done on my note and on all the articles we have published this year.

Like so many other law students, my joy over making law review was quickly replaced by utter panic when I realized I would be required to write a note. I think the hardest part of writing a note is getting started—picking a topic that others would want to read about and a topic that would keep me interested for an entire year. Enter Fred Phelps and the Westboro Baptist Church.

While Phelps and his family preach “against all forms of sin,” the Church takes a particularly strong anti-homosexual stance, believing that God hates homosexuality and tolerance of homosexuality above all else. To convey that belief, the congregation has taken to celebrating national tragedies—from the September 11th attacks to Hurricane Katrina—as the outpourings of God’s justice and wrath on America for its failure to

condemn homosexuality. Most recently, the congregation has switched tactics by going on “love crusades” to military funerals across the country.

Not surprisingly, the controversial protests have provoked both federal and state lawmakers to take action. To date, the federal government and at least 37 states have laws restricting demonstrations near funerals.

Without a doubt, the laws further important interests, namely, protecting funeral attendees’ rights to freedom of assembly and religion and protecting funeral attendees from offensive, unwanted communication. But significant interests alone cannot justify reasonable time, place, and manner regulations. The laws must also be narrowly tailored. The main problem with the majority of the laws is that they burden substantially more speech than is necessary to advance the governments’ legitimate interests. In most cases, the distance and time limitations are large enough to restrict communication that is intended for the general public and unrelated to the funeral. Additionally, the blanket prohibitions on images and sounds observable are problematic because they restrict expression regardless of whether it interferes with the funeral or whether it is so intrusive that it cannot be avoided. Finally, any reasonable time, place, and manner regulation must leave open ample alternative channels of communication to the speaker’s target audience. If the Church’s goal is to reach military funeral attendees, then the laws effectively close off the congregation’s ability to reach their target audience.

Despite the seemingly straightforward admonition in the First Amendment, “Congress shall make no law . . . abridging the freedom of speech,” such an absolutist view is untenable and has never been accepted. Line-drawing is inevitable. Lines must be drawn as to what speech is protected and what speech can be proscribed.



Katherine A. Ritts

Lines must be drawn as to when and where speech will be allowed. But legislators must not draw these lines haphazardly.

In drafting funeral-protest regulations, legislators must be careful not to unnecessarily trammel First Amendment rights. Lawmakers would be wise to draft restrictions as narrowly as possible, using Supreme Court precedents on the analogous circumstances of residential picketing and protests outside medical facilities for guidance.

The conflict surrounding the Church's desire to protest military funerals is fascinating, not only because of the unusual rationale and motivation behind the

demonstrations and the emotionally charged environments that are inevitably created, but also because it is a true test of First Amendment protections. The Westboro Baptist Church members are some of the most unsympathetic plaintiffs, but the unpopular minority perspective is precisely the type of speech that the First Amendment was meant to protect. I believe that we must honor our fallen soldiers by respecting those principles of freedom for which they made the supreme sacrifice.

Thank you for listening, and thank you again for this tremendous honor.

Call for Articles Fall 2009—Best Practices in Persuasion

The Journal of the Association of Legal Writing Directors (ALWD) invites submission of articles for its *Fall 2009 Best Practices in Persuasion* issue. The Journal encourages authors to submit articles addressing the “best practices” theme as well as articles on other topics that fit within the mission of the Journal.

The Journal's mission is to advance the study of professional legal writing and to become an active resource and a forum for conversation between the legal practitioner and the legal-writing scholar. The Journal is dedicated to encouraging and publishing scholarship (1) focusing on the substance of legal writing; (2) grounded in legal doctrine, empirical research, or interdisciplinary theory; and (3) accessible and helpful to all legal writers: attorneys, judges, law students, and legal academicians.

The Journal encourages submissions from law professors, practicing lawyers, and judges as well as from academics, researchers, and specialists in other disciplines. The final deadline for submission of articles for the Fall 2009 issue is September 15, 2008. Article selection will be completed by November 15, 2008.

The Fall 2009 issue marks the beginning of annual print production of the Journal, thanks to the support of Thomson's West, which prints the Journal, and ALWD, which supports distribution of the Journal by mail to some 3,200 practicing lawyers and judges; law-school libraries, deans, and professors; and others interested in the field of legal writing. The Journal is available electronically on the ALWD website (<http://www.alwd.org/jalwd.html>) and from Westlaw, SSRN, HeinOnLine, and H.W. Wilson Company. The Journal has been published biennially since 2002; annual electronic publication began with the Fall 2007 issue (which will be distributed in hard copy as part of the Fall 2008 issue).

Topic ideas

For the *Fall 2009 Best Practices in Persuasion* issue, the Journal editors envision articles that explain and apply theories and research from the law and other disciplines to lawyers' practices of persuasion. So, for example, articles might be constructed around classical and contemporary rhetorical theory; metaphor, narrative, and archetype theories; psychological theory and research; cognitive science studies; learning theory and research; communications theory and research; social research; cultural anthropology; critical theory; or empirical research focusing on legal audiences. Questions about potential articles are welcome and should be directed to jalwd@alwd.org.

The Journal will also select articles and practice notes for the Fall 2009 issue that do not specifically address the theme but fit within the mission of the Journal. The Fall 2009 issue will include the proceedings of the 2009 AALS Annual Section Program on Legal Writing, Reasoning, and Research.

For more information and general guidelines for submission, see <http://www.alwd.org/jalwd.html>.

Judges Write About Writing

Not only do judges write opinions, they have opinions—often strongly worded ones—about the state of legal writing today. Send your favorite quotations from judges about legal writing to siegelj@cooley.edu, and we'll print them here.

Evelyn Tombers sent us her favorite, from **Judge Aldisert** in his book *Winning on Appeal*:

“It is not unconstitutional to be interesting.”

Brian R. Guth, a new member of Scribes, noticed an interesting footnote in a recent environmental opinion of the United States Court of Appeals for the Ninth Circuit.

In *Northern Cheyenne v. Norton*, Circuit Judge Andrew J. Kleinfeld wrote for the majority and in his first footnote struck a blow for plain language. The opinion was filed on September 11, 2007.

¹ Environmental lawyers ordinarily use acronyms, and cite statutes by section numbers in the enactment rather than by section numbers in the United States Code. This opinion is written in ordinary English. Specialists might find this opinion more accessible if we explain that it concerns a NEPA challenge to a ROD of the BLM concluding that a FEIS adequately evaluated CBM development under the Powder River Resource Area RMP. The district court held the FEIS inadequate and partially enjoined approval of APDs until BLM completed a SEIS. We refer to statutory provisions by section numbers in the United States Code rather than section numbers in the original Act. See *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1308 n.1 (9th Cir. 1992).

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News from Members

Mark I. Harrison recently completed a term as Chair of the ABA Commission to Revise the Code of Judicial Conduct; the ABA House of Delegates adopted the revised code at its mid year meeting in 2007. He participated as a panelist at a symposium sponsored by the Annual Survey on American Law, held at NYU, on the topic “Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy?” And he coauthored two publications: *On the Validity and Vitality of Arizona’s Judicial Merit Selection System: Past, Present, and Future*, 34, No. 1 Fordham Urb. L.J. 239 (2007), and *The 2007 ABA Model Code of Judicial Conduct: Blueprint for a Generation of Judges*, 28 Just. Sys. J. 257 (2007).

Kevin Urbatsch announces the publication of *Special Needs Trusts: Planning, Drafting, and Administration*, by the California Continuing Education of the Bar (CEB) (www.ceb.com). Kevin was an attorney-editor and author, among other experts, of this 1200-page treatise. This in-depth manual is written primarily for a California audience, but one recent reviewer noted that planners around the country should find it an indispensable tool because it centers on national regulations governing SSI.

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